

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable David P. Shaw
Administrative Law Judge

IN THE MATTER OF

CERTAIN NETWORK DEVICES,
RELATED SOFTWARE AND
COMPONENTS THEREOF (I)

Investigation No. 337-TA-944
(Enforcement Proceeding)

RESPONSE OF RESPONDENT ARISTA NETWORKS, INC. TO THE COMPLAINT AND
NOTICE OF INVESTIGATION

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RESPONSE TO COMPLAINT

Pursuant to Commission Rule 210.75 (19 C.F.R. § 210.75), Respondent Arista Networks, Inc. (“Arista”) hereby responds to the Complaint filed on August 26, 2016 by Complainant Cisco Systems, Inc. (“Complainant”) under Section 337 of the Tariff Act of 1930, as amended, and to the Commission’s September 28, 2016 Notice of Investigation.

As will be established decisively in this enforcement proceeding, Cisco’s complaint is without merit. Arista’s EOS software has been redesigned to ensure that it does not infringe any asserted claim of the ’537 patent and that it complies with the Commission’s Orders. And Cisco knows this to be true or, at best, should know it to be true. Its complaint was brought not to redress any actual ongoing infringement, but as a commercial tool designed to advance Cisco’s interests in the marketplace.

The ’537 patent describes a specific approach by which a “managing subsystem” “registers” with a “central database” to “externally manage” specified data. *See, e.g.*, ’537 patent at claims 1, 10 and 19; *see also id.* at Abstract, Fig. 4, 5:8-11, 5:18-33. The registration process claimed and taught by the ’537 patent is request-based. Specifically, in every claim the managing subsystem must send a “management registration request” (interchangeably referred to as a “management request”) to the database specifying the particular data the managing subsystem wishes to externally manage. This requirement of a request going from the managing subsystem to the database is stated expressly and repeatedly throughout the claims and the specification, and there is no other approach described. *See, e.g.*, ’537 patent at claims 1, 10 and 19; *see also id.* at 5:18-33, 10:45-11:46, Figs. 4 and 5. The Commission found the prior versions of EOS to infringe, and the management registration request limitations to be met, based solely on the [REDACTED]. To

ensure total compliance with the Commission’s findings and eliminate any legitimate argument to the contrary, Arista invested thousands of person-hours to [REDACTED]. Without [REDACTED], EOS has no “management requests.” And without “management requests,” EOS cannot be held to infringe. For this reason, Cisco’s complaint must fail.

The absence of [REDACTED] in Arista’s redesigned switches is readily revealed and understood using simple tests relied upon by Cisco in its complaint. Despite this, Cisco did not identify the removal of [REDACTED] from EOS, and failed to identify any feature in the redesigned switches that meets the management request limitation.¹ In its haste to file a complaint at the earliest possible moment, Cisco tells an outdated story of how Arista’s switches allegedly infringed *before they were re-designed*. Cisco’s complaint even relies on claim charts that are virtual copies of the claims charts submitted with Cisco’s original complaint nearly two years ago, *before Arista’s products were re-designed*. Of course, the prior design of EOS is of no moment, and Cisco must prove infringement based on the actual features and functions that have been shipping in EOS since the end of the Presidential Review period. Because it cannot meet this burden, Cisco rehashes the past.

Equally troubling is Cisco’s repeated—but false—assertion that Arista is “continuing the sale of the Sysdb technology the Commission already found to be infringing.” The Commission did not hold that Arista’s “Sysdb technology” *in general* infringed the ‘537 patent’s narrow claims. On the contrary, the Commission held only that the specific process Arista EOS agents

¹ Arista reserves the right to seek sanctions against Cisco under 19 C.F.R. § 210.4, for reasons including, but not limited to, Cisco’s failure to conduct a reasonable inquiry, Cisco’s failure to provide any evidentiary support of infringement, and Cisco’s filing of an enforcement complaint for an improper purpose.

previously used to [REDACTED] infringed the '537 patent's request-based registration claims. Arista has not "continued the sale" of that technology, and Cisco's obfuscation of that fact speaks volumes.

Cisco's own words show its ulterior motives for hastily assembling and filing this complaint just four days after expiration of the Presidential review period. Beginning while the investigation was ongoing and increasing in intensity after it concluded, Cisco has embarked on a publicity blitz intended to market the Commission's determination, disparage Arista, and harass and intimidate Arista's business partners. *See, e.g.*, <http://blogs.cisco.com/news/protecting-innovation-update-on-itc-cases> ("Arista could attempt to reconfigure their supply chain and seek a local contract manufacturer to make infringing products using imported components. But this strategy would be inducing a breach of the ITC order, and make their manufacturer a willful infringer of Cisco's intellectual property. We will continue to take the action needed to protect our innovation.") The use of the Commission's procedures as a marketing tool is improper, particularly when Cisco has ignored or remained willfully ignorant of Arista's design changes and failed to identify any legitimate grounds for its renewed infringement allegations.

Ultimately, Cisco's complaint is baseless. Arista [REDACTED] from EOS that the Commission held to infringe. Arista's redesigned EOS does not infringe the '537 patent. And Arista has not directly or indirectly sold for importation, or sold within the United States after importation, any product that infringes literally or under the doctrine of equivalents, contributorily, or by inducement, any valid and enforceable asserted claim of the '537 patent.

Except as expressly admitted herein, Arista denies the allegations of the complaint. Arista has not had sufficient time and opportunity to collect and review all the information that

may be necessary to respond to the allegations raised in the complaint. To the extent that any allegations of the complaint refer to or rely upon such information, Arista lacks sufficient information on which to admit or deny such allegations and, on that basis, denies them. Moreover, Arista reserves the right to take further positions and raise additional defenses as may become apparent as a result of its ongoing investigation and additional information that may be discovered subsequent to the filing of this response.

ADMISSIONS AND DENIALS OF SPECIFIC ALLEGATIONS

The numbered Paragraphs herein correspond with and respond to the numbered Paragraphs set forth in the Complaint.

1. INTRODUCTION²

1.1. Arista admits that Cisco filed an Enforcement Complaint. Arista denies that it is violating the remedial orders of the International Trade Commission or that it is unlawfully using Cisco's patented technology. Arista denies that the document attached to the Complaint as Exhibit 1, which states in part that "Cisco was engaging in a series of anti-competitive behaviors" in order to "protect its monopoly position in switching and routing," is a copy of "Arista's Q4 2015 Earning Conference Call, dated October 5, 2015." Arista admits that Jayshree Ullal is Arista's President and Chief Executive Officer. Arista denies that the manipulated and annotated image in paragraph 1 appeared on Arista's website. Upon information and belief, the image in paragraph 1 appears to have been created by Cisco or its counsel for purposes of this

² For ease of reference, Arista responds to the Complaint using the same headings used by Cisco. Since the headings in Cisco's Table of Contents differ from headings used in the body of the complaint, Arista will use herein the headings of the complaint. Use of these headings, however, does not constitute and should not be interpreted as admissions by Arista as to any facts and/or allegations contained within Cisco's Complaint.

proceeding. Arista denies that the Commission found “SysDB technology” in general to be infringing. Arista denies any remaining allegations of this paragraph.

1.2. Arista admits it has redesigned its products to avoid any violation of the Commission’s orders. Arista denies that its redesigned switch products and components thereof are presumed to be infringing. Arista admits that Exhibit 6 purports to be a copy of Arista’s Form 10-Q. Arista is without sufficient information upon which to admit or deny the allegations of paragraph 2 and, on that basis, denies the allegations of this paragraph.

1.3. Arista denies that its redesigned products infringe the ’537 patent. Arista denies that the ’537 patent covers “SysDB technology” Generally. Arista lacks sufficient information upon which to admit or deny any remaining allegations of paragraph 3 and, on that basis, denies the remaining allegations of this paragraph.

2. PRIOR PROCEEDINGS AND ORDERS

2.1. Arista admits that Cisco filed a complaint on December 19, 2014 which resulted in the institution of Investigation No. 337-TA-944. Arista denies that the ’537 patent covers Cisco’s SysDB technologies. Arista admits the Commission issued a Notice of Investigation on January 21, 2015, and that Administrative Law Judge Shaw (“ALJ”) found that Arista’s products (before they were redesigned) infringed claims 1-2, 8-11 and 17-19 of the ’537 patent. Arista admits that the Commission affirmed the ALJ’s Initial Determination and issued a Limited Exclusion Order and a Cease and Desist Order on June 23, 2016. Arista admits the Presidential review period for the Commission’s Orders concluded on August 22, 2016. Arista denies the remaining allegations of this paragraph.

2.2. Arista denies that the document attached to the Complaint as Exhibit 1 is a copy of “Arista’s Q4 2015 Earning Conference Call, dated October 5, 2015.” Arista denies that it has imported or sold products in violation of the Commission’s Orders. Arista admits that Exhibit 26

purports to be “Arista’s Q2 2016 Earnings Conference Call, dated Aug. 4, 2016,” but denies that the modified quotation from Exhibit 26 accurately reflects the content of the document. Arista admits that Exhibit 8 purports to be a document entitled “Nomura.” Arista admits that Exhibit 6 purports to be a copy of “Arista Networks, Inc., Form 10-Q, dated Aug. 4, 2016.” Arista denies the remaining allegations of this paragraph.

2.3. Arista admits that Exhibit 10 purports to be a screenshot of an Arista website. Arista denies the remaining allegations of this paragraph.

2.4. Arista denies that its products infringe any valid and enforceable asserted claim of the ’537 patent under any theory. Arista denies that the ’537 patent covers “SysDB technology” in general. Arista denies the remaining allegations of this paragraph.

2.5. Arista denies that its products infringe any valid and enforceable asserted claim of the ’537 patent under any theory. Arista denies that it has violated the Commission’s June 23, 2016 Cease and Desist Order. Arista denies the remaining allegations of this paragraph.

3. JURISDICTION

3.1. To the extent this paragraph contains conclusions of law, no response is necessary. To the extent this paragraph contains allegations of fact, Arista lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph, and on that basis denies each and every remaining allegation.

4. COMPLAINANT

4.1. Arista admits that Exhibit 12 purports to be Cisco’s 2014 Annual Report. Arista lacks sufficient information upon which to admit or deny the allegations of this paragraph and, on that basis, denies them.

4.2. Arista admits that Exhibit 13 purports to be assignment documents for the '537 patent. Arista lacks sufficient information upon which to admit or deny the remaining allegations of this paragraph and, on that basis, denies them.

5. RESPONDENT

5.1. Admitted.

5.2. Arista admits that it develops and sells networking equipment, including switches, operating systems, and other software, and imports one or more commodity sub-components of such networking equipment into the United States, but denies that any such activity violates the Commission's Cease and Desist Order. To the extent that this paragraph contains conclusions of law, no response is necessary. To the extent not specifically and expressly admitted, Arista denies all other allegations and characterizations of this paragraph.

6. THE COMMISSION'S ISSUANCE OF A LIMITED EXCLUSION ORDER AND CEASE AND DESIST ORDER

6.1. Arista admits that Exhibit 14 purports to be a copy of the '537 patent. Arista avers that Exhibit 14 speaks for itself. To the extent that this paragraph contains conclusions of law, no response is necessary. To the extent not specifically and expressly admitted, Arista denies all other allegations and characterizations of this paragraph.

6.2. Arista admits that Exhibit 7 purports to be a copy of the public version of the Commission Opinion issued on June 23, 2016. Arista admits that Exhibits 11 and 19 purport to be copies of Limited Exclusion Order and Cease and Desist Order, respectively, issued by the Commission. Arista admits that Presidential Review Period ended on August 22, 2016, and the Commission's Orders went into effect as of August 23, 2016. To the extent not specifically and expressly admitted, Arista denies all other allegations and characterizations of this paragraph.

6.3. Arista avers that Exhibit 14 speaks for itself. Arista denies all other allegations and characterizations of this paragraph.

6.4. Arista avers that Exhibit 11 speaks for itself. Arista denies all other allegations and characterizations of this paragraph.

6.5. Arista denies that it is violating the remedial orders of the International Trade Commission or that its redesigned products infringe the '537 patent. Arista denies all other allegations and characterizations of this paragraph.

7. THE ARISTA PRODUCTS AT ISSUE

7.1. Arista denies that it is violating the remedial orders of the International Trade Commission or that its redesigned products infringe the '537 patent. Arista admits that its 7010, 7048, 7050, 7060, 7150, 7250, 7260, 7280, 7300, 7320, and 7500 series of switches are made in the United States and include some imported commodity components. Arista denies all other allegations and characterizations of this paragraph.

8. NO EVIDENCE OF VIOLATION OF THE CEASE AND DESIST

8.1. Denied.

8.2. Arista admits that Exhibit 20 purports to be a copy of a Letter of Customer Communication dated June 27, 2016. Arista avers that Exhibit 20 speaks for itself. Arista denies all other allegations and characterizations of this paragraph.

8.3. Arista admits that the noninfringing 4.16.7M version of EOS is subsequent to the redesigned and noninfringing 4.16.6M version. Arista admits that Exhibit 21 purports to be a partially redacted copy of a receipt of purchase of an Arista DCS-7050TX-48-F Ethernet Switch. Arista denies that its redesigned EOS infringes any claim of the '537 patent. Arista is without sufficient information upon which to admit or deny the remaining allegations of this paragraph and, on that basis, denies them.

8.4. Arista denies that its redesigned products infringe any claim of the '537 patent and denies that its redesigned products are Covered Products. Arista denies that it has marketed, distributed, offered for sale, sold, advertised, or aided or abetted other entities in the sale or distribution for consumption in the United States of any Covered Products subsequent to August 22, 2016. Arista denies that it markets, offers to sell, sells, and advertises any Covered Products on its website. Arista denies that the document attached to the Complaint as Exhibit 1 is a copy of "Arista's Q4 2015 Earning Conference Call, dated October 5, 2015," but admits that Exhibit 1 states that "Cisco was engaging in a series of anti-competitive behaviors" in order to "protect its monopoly position in switching and routing." Arista admits that Exhibit 10 purports to be a screenshot of an Arista website. Arista admits that Exhibit 2 purports to be a copy of an Arista website. Arista admits that Exhibit 3 purports to be a transcript of an "Arista Networks Inc. at Oppenheimer Technology, Internet & Communications Conference" and avers that Exhibit 3 speaks for itself. Arista admits that Exhibit 5 purports to be a transcript of an "Arista Networks Inc. at Nomura Media, Telecom and Internet Conference" and avers that Exhibit 5 speaks for itself. Arista is without sufficient information upon which to admit or deny the remaining allegations of this paragraph and, on that basis, denies them.

8.5. Arista denies that it is violating the remedial orders of the International Trade Commission or that its redesigned products infringe the '537 patent. Arista admits that Exhibit 25 purports to be a copy of an "edited transcript" of an "Arista Networks Inc. at Cowen Technology, Media & Telecom Conference" on June 1, 2016. Arista denies that that the quote Cisco incorrectly attributes to Arista's CFO is accurate. Arista admits that Exhibit 9 purports to be a transcript of "Arista Networks Inc. at Pacific Crest Global Technology Leadership Forum" dated August 24, 2016, which includes Arista's statement that "we are absolutely respecting the

ITC order” and have “remedied any infringements that were found in the case.” Arista admits that Exhibit 26 purports to be “Arista’s Q2 2016 Earnings Conference Call” dated August 4, 2016. Arista admits that Exhibit 3 purports to be a transcript of an “Arista Networks Inc. at Oppenheimer Technology, Internet & Communications Conference” dated August 9, 2016 and avers that Exhibit 3 speaks for itself. Arista admits that Exhibit 8 purports to be a document entitled “Nomura.” Arista admits that Exhibit 27 purports to be a copy of a document titled “Internet Security, Communications Infrastructure, & Storage – Company Update” dated June 24, 2016. Arista admits that Exhibit 28 purports to be a copy of a document titled “Barclays Equity Research” dated June 23, 2016. Arista admits that Exhibit 29 purports to be a copy of a document titled “GS Hardware & CommTech Weekly” dated June 20, 2016. Arista is without sufficient information upon which to admit or deny the remaining allegations of this paragraph and, on that basis, denies them.

8.6. Arista admits that Exhibit 30 purports to be a printout of a website, but denies Cisco’s misleading and self-serving characterizations of Exhibit 30. Arista denies that it is violating the Limited Exclusion Order and the Cease and Desist Order. Arista denies any remaining allegations of this paragraph.

8.7. Arista admits that Exhibit 31 purports to be a copy of Arista Networks, Inc.’s Form 10-K, dated February 25, 2016. Arista admits that its highly innovative products compete with Cisco, Brocade Communications Systems, Dell, Hewlett-Packard, Juniper Networks, IBM, and VMWare. Arista denies any remaining allegations of this paragraph.

8.8. Arista admits that a document purporting to be Arista’s Form 10-Q is attached to the Complaint as Exhibit 6, and avers that the document speaks for itself. Arista denies Cisco’s misleading and self-serving characterizations of Exhibit 6.

9. APPROPRIATE RELIEF

9.1. Arista denies the statements in this section and all subparagraphs ((a)-(d)) thereof to the extent that those statements purport to allege the existence of any factual or legal predicates for the relief requested. Arista denies that it is violating, or has ever violated, the Commission's June 23, 2016 Limited Exclusion Order or Cease and Desist Order. Arista denies that any patent claims at issue in this enforcement proceeding are valid, enforceable, and infringed. Arista also denies that Cisco is entitled to any relief whatsoever from the United States International Trade Commission as prayed for in the Complaint or otherwise, including without limitation the relief requested in this paragraph and all subparagraphs thereof. The relief sought by Cisco is not in the public interest.

RESPONSE TO NOTICE OF INVESTIGATION

Arista denies that it is violating or has ever violated the Commission's June 23, 2016 Cease and Desist Order. Arista denies that Cisco is entitled to any relief in this proceeding.

AFFIRMATIVE DEFENSES

Without altering the burdens of proof, Arista asserts the following affirmative and other defenses. Arista reserves the right to modify and/or expand these defenses and raise additional defenses as this investigation proceeds.

FIRST AFFIRMATIVE DEFENSE: NON-INFRINGEMENT

1. Arista has not infringed and does not infringe, either directly or indirectly, literally or under the doctrine of equivalents, and has not contributed to the infringement of or induced the infringement of any valid and enforceable Asserted Claim of the Asserted Patents at

any time since August 23, 2016, when the Commission's Cease and Desist Order went into effect.

SECOND AFFIRMATIVE DEFENSE: INVALIDITY OF THE '537 PATENT

2. One or more claims of the '537 patent are invalid and/or unenforceable for failure to meet the requirements of 35 U.S.C. §§ 102, 103, and 112.

3. One or more claims of the '537 patent are invalid under 35 U.S.C. § 102 because, without limitation, (a) the claimed invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicants, (b) the claimed invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country more than one year prior to the date of application for patent, (c) the applicant did not himself invent the subject matter sought to be patented, and (d) before the applicant's invention of the claimed invention, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it.

4. One or more claims of the '537 patent are invalid under 35 U.S.C. § 102 based on at least the following prior art currently known to Arista: U.S. Patent No. 6,728,723; U.S. Patent No. 6,704,752; U.S. Patent No. 5,838,918; U.S. Patent No. 5,933,646; U.S. Patent No. 6,684,241; U.S. Patent No. 6,219,675; U.S. Patent No. 5,479,601; "An Overview of the AgentX Protocol" by Matt White et al., SIMPLE TIMES, March 1998

5. One or more claims of the '537 patent are invalid and unenforceable under 35 U.S.C. § 103 because, without limitation, the difference between the subject matter of each such claim and the prior art is such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.

6. One or more claims of the '537 patent are invalid under 35 U.S.C. § 103 based upon combinations of at least two or more of the following prior art references now known to Arista: U.S. Patent No. 6,728,723; U.S. Patent No. 6,704,752; U.S. Patent No. 5,838,918; U.S. Patent No. 5,933,646; U.S. Patent No. 6,684,241; U.S. Patent No. 6,219,675; U.S. Patent No. 5,479,601; “An Overview of the AgentX Protocol” by Matt White et al., SIMPLE TIMES, March 1998

7. It would have been obvious to one of ordinary skill in the art to combine any reference listed above with any other reference or any combination of references listed therein, as these references identify and address the same set of technical issues and suggest similar solutions to those issues. Additionally, any alleged differences between the asserted claims of the '537 patent and any of the prior art are trivial and, when combined with the knowledge of one of ordinary skill in the art at the relevant time, each such claim is obvious under 35 U.S.C. §103.

8. One or more claims of the '537 patent are invalid for failure to comply with the requirements of 35 U.S.C. § 112 including, but not limited to, lack of written description, failure to particularly point out and distinctly claim the alleged invention, failure to enable any person skilled in the art to make and use the alleged invention, and failure to inform, with reasonable certainty, those skilled in the art about the scope of the invention.

9. Arista's investigation is ongoing. Arista reserves the right to modify and/or expand these defenses and raise additional defenses as this investigation proceeds.

THIRD AFFIRMATIVE DEFENSE: THE REQUESTED REMEDY IS NOT IN THE PUBLIC INTEREST

10. Cisco's demands for relief are barred under 19 U.S.C. § 1337(d)(1) because of the detrimental effect such relief would have upon the public health and welfare, competitive

conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, including for the reasons set forth in Arista's December 8, 2014 Submission on the Public Interest.

FOURTH AFFIRMATIVE DEFENSE: COMPLAINANT IS NOT ENTITLED TO THE REQUESTED REMEDY DUE TO UNCLEAN HANDS

11. Cisco is not entitled to any relief as a result of its unclean hands, including but not limited to filing an enforcement complaint for an improper purpose, failing to conduct the diligence required by the Commission, or any other misconduct that may be revealed through discovery.

Dated: October 14, 2016

Respectfully Submitted,

/s/ Bert C. Reiser

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CERTIFICATE OF SERVICE

It is hereby certified that copies of **RESPONSE OF RESPONDENT ARISTA NETWORKS, INC. TO THE COMPLAINT AND NOTICE OF INVESTIGATION (PUBLIC VERSION)** were served on October 26, 2016 as follows:

<p>The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E Street, SW, Room 112 Washington, DC 20436</p>	<p>By EDIS</p>
<p>The Honorable David P. Shaw Administrative Law Judge U.S. International Trade Commission 500 E Street, S.W., Room 317 Washington, D.C. 20436</p>	<p>By Hand Delivery (1 copy) and Email: patricia.chow@usitc.gov</p>
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/s/ Erika J. Weinstein _____

Erika J. Weinstein

Litigation Analyst

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